



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2004

Ms. Veronica Ocañas
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

OR2004-8589

Dear Ms. Ocañas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210692.

The City of Corpus Christi (the "city") received a request for information pertaining to the following three categories for a specified time period: 1) cellular telephone records of five named city employees, 2) automatic vehicle locator records for certain vehicles, and 3) records related to travel expenses of two named employees. You state that "most" of the responsive information has been provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of representative samples.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information deemed confidential by other

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

statutes. You assert that the requested Automatic Vehicle Locator ("AVL") records are confidential under the Texas Homeland Security Act, specifically sections 418.176, 418.177, 418.180, and 418.181 of the Government Code. Section 418.176 provides in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a).

You state that the AVL records are "information collected, assembled, and maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity." You inform us that "AVL is a technology requirement of the [United States] Department of Homeland Security." Further, you state that the requested AVL records relate to the staffing requirements of four local area emergency response providers: the city police and fire departments, the Nueces County Sheriff and Constables, and the Regional Transportation Authority. You state that

for the [fire department], the particular use of the AVL is for firefighter safety and accountability. The goal is to know where every firefighter is located, to know the firefighter's health and condition, and to have the ability to remove the firefighter from life-threatening situations. Also all firefighting equipment needs to be located and tracked through an AVL. The data must be continuously updated on the Incident Commander's GIS and the dispatcher's CAD displays to indicate the location and health of all firefighter assets.

You assert that an AVL record "locates the staff of each provider in real-time [and] shows the patterns of deployment and methods of response, response time, reaction and location." Having considered your representations and reviewed the submitted representative sample of information, we conclude that the AVL records submitted as Exhibits B and C are

confidential under section 418.176 of the Government Code and must be withheld under section 552.101 of the Government Code.²

Next, you assert that portions of the remaining submitted records are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home address and telephone number, social security number, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code.³ We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home). Therefore, pursuant to section 552.117(a)(2), the city must withhold the present and former home addresses, home telephone numbers, and family member information of the employees in question if they were licensed peace officers at the time this request was received.⁴ However, if any of these employees was not a licensed peace officer but elected, prior to the receipt of this request, to keep such information confidential, the city must withhold the same information pursuant to section 552.117(a)(1). The city may not withhold this information under section 552.117 for those employees who are not peace officers and did not make a timely election to keep the information confidential.

Additionally, a portion of the submitted information is confidential under section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Thus, pursuant to this section, the city must withhold the account numbers that you have highlighted.

In summary, the AVL records submitted as Exhibits B and C are confidential under section 418.176 of the Government Code and must be withheld under section 552.101. The city must withhold the home addresses, home telephone numbers, and family member information of licensed peace officers under section 552.117(a)(2). For an employee who is not a licensed peace officer but made a timely election pursuant to section 552.024, the city

²As our ruling is dispositive, we do not address your remaining claim for the information submitted as Exhibit C.

³"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

⁴As section 552.117(a)(2) is dispositive as to information pertaining to peace officers, we do not address your section 552.1175 claim.

must withhold the same information pursuant to section 552.117(a)(1). The city must withhold the highlighted account numbers under section 552.136. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 210692
Enc. Submitted documents

c: Mr. René Rodriguez
433 South Tancanhua
Corpus Christi, Texas 78401
(w/o enclosures)